NADCHATIRAM REALITIES (1960) SDN BHD & ANOR

v.

MAHADEVI NADCHATIRAM & ANOR

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
ABDUL MALEK AHMAD JCA
DENIS ONG JCA
[CIVIL APPEAL NO: N-02-207-1997]
11 FEBRUARY 2000

CIVIL PROCEDURE: *Judgments and orders - Consequential orders - Draft order approved without trial - No objections from the other party - Draft order signed by both parties - Whether necessary to have hearing - Whether trial judge erred in approving draft order*

The Federal Court had earlier dismissed the appellants' appeal and remitted the case to the High Court for the determination of consequential orders. Thereafter, the respondents tendered a draft of the consequential orders they sought. The appellants did not object to the draft and both parties signed it and the learned judge approved it. The appellants' complaint in the instant appeal was that the learned judge did not conduct a trial in respect of the orders sought and granted, nor was a written judgment delivered in respect thereof.

Held:

Per Shaik Daud Ismail JCA

[1] The appellants did not object to the draft order; they remained silent, signifying their approval of it. There was, therefore, no necessity for the hearing to resume, and the learned judge rightly concluded there and approved the draft order.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Mahkamah Persekutuan telah pada awalnya membuang rayuan perayu-perayu and telah meremit kes tersebut ke Mahkamah Tinggi untuk perintah berbangkit diputuskan. Selepasnya, pihak responden telah menghantar deraf untuk perintah berbangkit yang mereka kehendaki. Pihak perayu tidak membuat bantahan terhadap deraf tersebut dan kedua-dua parti telah menandatanganinya, dan hakim bijaksana telah memberi persetujuannya. Aduan pihak perayu dalam rayuan ini adalah hakim bijaksana tidak mengadakan perbicaraan berkenaan dengan perintah-perintah yang dipohon dan diberi mahupun suatu keputusan bertulis diberi berkenaan dengannya.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Perayu tidak membantah deraf perintah; mereka telah berdiam diri, menunjukkan persetujuan mereka terhadap hal tersebut. Maka, oleh itu, tidak terdapat keperluan untuk perbicaraan dimulakan semula, dan hakim perbicaraan telah membuat kesimpulan dengan betulnya dan telah membenarkan deraf perintah.

[Rayuan ditolak.]

For the appellants - RR Sethu (S Satharuban with him); M/s Satha & Co
For the respondents - KS Narayanan (Saranjit Singh & Mahadevi Nadchatiram with him); M/s Mahadevi Nadchatiram & Partners

[Appeal from High Court, Seremban; Civil Suit No: 22-34-91]

Reported by Alex KC Lee

JUDGMENT

Shaik Daud Ismail JCA:

This appeal came up for hearing before us on 23 September 1998 and we reserved our decision whereby on 24 September 1998, we dismissed the appeal with costs. In order to appreciate our dismissal of this appeal, it is pertinent for us to set out in detail the events which led up to this appeal.

Nadchatiram Realities (1960) Sdn. Bhd. a company incorporated on 10 November 1960 by the late Mr. Nadchatiram s/o Muttucumaru and Madam Kanala Devi Nadchatiram, was compulsorily wound up on 5 September 1989 in the Seremban High Court. On 1 August 1990 the first respondent Mahadevi a/p Nadchatiram, as plaintiff, issued an originating summons against the second respondent Jegadevan a/l Nadchatiram for delivery of the title in respect of land held under certificate of title No. 16143 Lot No. 2484 Mukim of Rasah, Seremban, the memorandum of transfer issued on 16 May 1980 by the first appellant and the original declaration of trust created on 16 May 1980 by the late Mr. Nadchatiram s/o Muttucumaru on the ground that the first appellant held the subject land in trust for her.

The second appellant, a shareholder of the first appellant applied and was added as an intervener on 4 February 1991. Subsequently the first respondent amended the originating summons to add the first appellant (in liquidation) as a co-defendant. The order was granted on 27 September 1991.

The second appellant caused the first appellant to file a civil suit against the first respondent to declare null and void the declaration of trust.

On 23 December 1991, the Seremban High Court ordered the consolidation of the originating summons and the civil suit and both to proceed as one action and to be tried simultaneously.

The hearing of this consolidated matter commenced in the Seremban High Court on 30 September 1992. At the adjourned hearing on 22 February 1993 at the behest of learned counsel for the first respondent and agreed to by the learned counsel for the appellant, the originating summons in respect of the validity of the declaration of trust was to be heard first. Both parties agreed that the hearing be confined to the issue of the validity of the declaration of trust, as a preliminary issue. Thereafter the trial proceeded accordingly.

At the conclusion of the trial on 29 March 1994, the learned judge declared the trust to be valid. Not being satisfied with the learned judge's order, the appellants appealed to the then Federal Court on the same day ie, 29 March 1994. The appeal was heard in the Federal Court and dismissed on 30 October 1996 but the Federal Court remitted the matter back to the same High Court judge "untuk menentukan perintah berbangkit dalam guaman sivil dan guaman pemula" (to determine consequential orders raised in both the civil suit and the originating summons). There then arose a serious dispute as to what actually the Federal Court meant when it remitted the matter to the High Court, with the appellants contending that there ought to be a trial on the remaining issues while the respondents contending that the Federal Court remitted the matter back for determination of the consequential issues only. This finally resulted in the appellants filing a motion in the Federal Court on 24 April 1997 for a clarification of its order dated 30 October 1996. The motion came up for hearing in the Federal Court on 24 November 1997 but was adjourned until the disposal of the present appeal.

Before the resumption of hearing in the High Court, the appellants filed an application on 17 March 1997 in the consolidated proceedings to amend the counterclaim in the suit. This resulted in several fresh affidavits being filed by both parties. Then again on 27 March 1997, the appellants filed an application for a stay of hearing of the consolidated proceedings pending the clarification of the order in the Federal Court. This too resulted in several affidavits from both parties.

Finally on 11 April 1997 the proceedings resumed in the High Court before the same judge. At the request of the appellants the resumed hearing was adjourned pending the disposal of the clarification motion in the Federal Court. At the adjourned hearing on 5 May 1997 the appellants wanted the two summonses-in-chambers, ie, the amendment and the stay, to be heard first.

The learned judge refused to do so declaring that he was sitting pursuant to the order of the Federal Court dated 30 October 1996 requiring him to determine the consequential orders in the consolidated suit.

Consequently, learned counsel for the respondent handed to the court a draft of the consequential orders sought. The learned judge's notes show that the appellant did not object to the draft order and it was recorded that both parties signed the draft order. Consequently, the learned judge approved the draft order.

Now those are the salient events which led up to this appeal. Learned counsel for the appellants argued that at the hearing of the consequential orders, the learned judge did not consider all the prayers in the originating summons fully and that the learned judge in fact did not conduct any trial on the orders and reliefs granted, and that no written judgment was delivered.

On our scrutiny of the notes of the learned judge, we found that he was in fact prepared to resume hearing on 11 April 1997 pursuant to the Federal Court order dated 30 October 1996 but the appellant requested an adjournment to 5 May 1997 pending the disposal of the clarification motion in the Federal Court. Then came 5 May 1997 and before the hearing could resume or at the commencement of the hearing, a draft of the consequential orders sought was tendered. Most important of all, no objections were raised by the appellants. They remained silent thereby giving the impression to the court that they approved the draft order. Consequently, the learned judge approved the draft. In the light of this there was no necessity for the hearing to resume and the learned judge rightly did not proceed further. He had before him a draft order agreed to by both parties. In the circumstances, we see nowhere did the learned judge erred. We found no merit in the appeal and accordingly dismissed it with costs. We ordered the deposit to go to the respondent to the account of costs.